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PM/SNA AMB JACKSON MCDONALD

E.O. 12958: N/A
TAGS: [MARR](#) [PREL](#) [PGOV](#) [KS](#)
SUBJECT: U.S.-ROK SMA AGREEMENT SIGNED

REF: STATE 03513

1. (SBU) In accordance with reftel, Ambassador Kathleen Stephens and Foreign Minister Yu Myung-hwan signed the U.S.-ROK 2009-2013 Special Measures Agreement (SMA) on Thursday, January 15. Both parties made brief remarks following the ceremony underlining the significance of the Agreement as a tangible sign of the high degree of cooperation that exists between the United States and the Republic of Korea.

2. (SBU) Prior to the signing Embassy and MOFAT officials exchanged diplomatic notes specifying U.S. Forces Korea's nine in-kind construction principles. The diplomatic notes were initialed by Political Minister Counselor Joseph Yun and MOFAT SMA Ambassador Cho Byung-jae. Scanned copies of the signed agreement and initialed diplomatic notes have been sent to both EAP/K and USFK.

3. (SBU) Once the Embassy and MOFAT's entry into force notes are available they will be transmitted to L/T.

3. (SBU) The texts of the signed SMA Agreement and initialed diplomatic note follows:

Begin SMA Agreement Text.

AGREEMENT BETWEEN
THE UNITED STATES OF AMERICA
AND THE REPUBLIC OF KOREA
CONCERNING SPECIAL MEASURES RELATING TO
ARTICLE V OF THE AGREEMENT UNDER ARTICLE IV
OF THE MUTUAL DEFENSE TREATY BETWEEN
THE REPUBLIC OF KOREA AND THE UNITED STATES OF AMERICA
REGARDING FACILITIES AND AREAS AND THE STATUS OF UNITED
STATES ARMED FORCES IN THE REPUBLIC OF KOREA

The United States of America and the Republic of Korea (hereinafter referred to as "the Parties") have agreed to take the following special measures relating to Article V of the Agreement under Article IV of the Mutual Defense Treaty between the Republic of Korea and the United States of America Regarding Facilities and Areas and the Status of United States Armed Forces in the Republic of Korea (hereinafter referred to as "the Status of Forces Agreement") signed at Seoul on July 9, 1966, as amended, which sets forth the principles on the sharing of expenditures incident to the maintenance of the United States Armed Forces in Korea, in recognition of the goal of a strong and mutual commitment to the Republic of Korea - United States of America alliance.

Article I

The Republic of Korea shall bear, for the duration of this Agreement, as a special measure relating to Article V of the Status of Forces Agreement, a part of the expenditures associated with the stationing of the United States Armed

Forces in Korea. The contribution of the Republic of Korea shall be categorized into Labor Cost Sharing, Logistics Cost Sharing, and Republic of Korea Funded Construction. Implementation of this Agreement shall be in accordance with a separate implementation arrangement between the concerned authorities of the Parties.

Article II

This Agreement shall determine the contribution of the Republic of Korea for 2009 through 2013. The contribution of the Republic of Korea for 2009 is 760 billion Korean Won. The 2010, 2011, 2012, and 2013 contributions shall be determined by increasing the contribution of the previous year by the inflation rate (Consumer Price Index) published by the Korea National Statistical Office using the 2008 rate for the 2010 contribution, the 2009 rate for 2011, the 2010 rate for 2012, and the 2011 rate for 2013. Further, the inflation rate used for any given year shall not exceed four percent.

Article III

The Labor Cost Sharing contributions shall consist of cash support and the Logistics Cost Sharing contribution shall consist of in-kind support. Republic of Korea Funded Construction shall consist of cash contributions and in-kind contributions. Republic of Korea Funded Construction shall be gradually shifted to the in-kind contributions from 2009, and the contributions of Republic of Korea Funded Construction shall be completely in-kind starting from 2011, except for expenses associated with design and construction oversight of facilities. If unexecuted in-kind contributions of Republic of Korea Funded Construction remain at the end of the year, those contributions shall roll over to the next year. Implementation details of the Republic of Korea Funded Construction, such as guiding principles and specific procedures, shall be in accordance with separate documents between the concerned authorities of the Parties.

Each year's Labor Cost Sharing payments shall be made in three equal payments on or before April 1, June 1, and August 1 of that year. Republic of Korea Funded Construction contributions provided in cash shall be paid, before the completion of the shift, in two equal payments with 50 percent paid on March 1 of the program year and 50 percent paid one year later (March 1). After the completion of the shift, expenses associated with design and construction oversight of facilities shall be paid on March 1 of each program year.

Article IV

All materials, supplies, equipment and services provided as part of the in-kind contribution shall be exempt from Republic of Korea taxes, or provided on an after-tax basis. Such materials, supplies, equipment and services procured by the Government of the Republic of Korea shall be exempt from individual consumption taxes and value added taxes. In the case of value added taxes, the zero rate shall be applied. If taxes are levied against any such materials, supplies, equipment or services, payment of such taxes shall not be made from cost-sharing funding.

Article V

This Agreement shall enter into force upon the date of the exchange of written notification by the Parties that their respective domestic legal procedures necessary for the entry into force of this Agreement have been completed, and shall remain in force until December 31, 2013.

The termination of this Agreement shall not affect the carrying out of any Republic of Korea Funded Construction projects which are selected every year in accordance with the agreed procedures under this Agreement, and not fully executed as of the date of termination of this Agreement.

Article VI

The Parties may consult on all matters regarding this Agreement through the Joint Committee provided for in Paragraph 1 of Article XXVIII of the Status of Forces Agreement, or through the Joint Cost-Sharing Committee, which is composed of representatives appointed by the Parties.

Article VII

This Agreement may be revised or amended in writing by mutual consent. The revision or amendment of this Agreement shall enter into force on the date when the Parties exchange written notifications that their domestic legal requirements for such revision or amendment have been fulfilled.

IN WITNESS WHEREOF, the undersigned, duly authorized for the purpose, have signed this Agreement.

DONE at Seoul this 15th day of January 2009, in duplicate, in the Korean and English languages, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA
FOR THE REPUBLIC OF KOREA

End Text.

Begin Diplomatic Note Text.

No. 021

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and Trade of the Republic of Korea and has the honor to refer to recent discussions between representatives of our two governments regarding the Agreement between the Republic of Korea and the United States of America concerning special measures relating to Article V of the agreement under Article IV of the Mutual Defense Treaty between the Republic of Korea and the United States of America regarding facilities and areas and the Status of United States Armed Forces in the Republic of Korea signed on January 15, 2009 (hereinafter referred to as "the SMA") and proposes that the in-kind construction contributions be implemented in accordance with the following principles:

- (1) The Republic of Korea Funded Construction remains under the SMA.
- (2) The United States of America, after consultation with the Republic of Korea, selects and prioritizes construction projects based on military needs.
- (3) The Republic of Korea awards construction contracts and implements construction projects in accordance with the corresponding timeline as identified and developed during project design.
- (4) The United States is responsible for project design.
- (5) The United States provides design specifications and a list of acceptable contractors to the Republic of Korea. Contractors shall be Republic of Korea companies selected from the United States Army Corps of Engineers Far East District's Pre-Qualified contractor list.
- (6) Design and Construction oversight, which averages twelve (12) percent of the total project costs, is paid by the Republic of Korea in cash.
- (7) Any bid savings shall be used for future projects.
- (8) The United States and the Republic of Korea shall establish proper procedures to prevent unexecuted contributions. In the unlikely event that unexecuted

contributions exist at the end of the year, those contributions shall roll over to the next year.

(9) An annual review system shall be established to ensure "in-kind" procedures are working. For the project or projects where it is determined "in-kind" procedures are not working, the Republic of Korea and the United States shall consult in an effort to resolve the problem, and take proper actions to complete the project or projects including providing cash to the United States.

Thirty (30) percent of the 2009 Republic of Korea Funded Construction contribution shall be provided by the Republic of Korea in-kind, sixty (60) percent of the 2010 Republic of Korea Funded Construction contribution shall be provided by the Republic of Korea in-kind, and from 2011 to 2013 eighty-eight (88) percent of the Republic of Korea Funded Construction contribution shall be provided by the Republic of Korea in-kind.

If the foregoing is acceptable to the Republic of Korea, the Embassy has the honor to propose that this note, together with the Ministry's reply, shall constitute an agreement between the two governments, which shall enter into force at the same time as the SMA.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs and Trade the assurances of its highest consideration.

Seoul, January 15, 2009.

Reply Note:
OSJ 2009-

The Ministry of Foreign Affairs and Trade of the Republic of Korea presents its compliments to the Embassy of the United States of America and has the honor to refer to the Embassy's note 021 dated January 15, 2009, which reads as follows:

The Embassy of the United States of America presents its compliments to the Ministry of Foreign Affairs and Trade of the Republic of Korea and has the honor to refer to recent discussions between representatives of our two governments regarding the Agreement between the Republic of Korea and the United States of America concerning special measures relating to Article V of the agreement under Article IV of the Mutual Defense Treaty between the Republic of Korea and the United States of America regarding facilities and areas and the Status of United States Armed Forces in the Republic of Korea signed on January 15, 2009 (hereinafter referred to as "the SMA") and proposes that the in-kind construction contributions be implemented in accordance with the following principles:

- (1) The Republic of Korea Funded Construction remains under the SMA.
- (2) The United States of America, after consultation with the Republic of Korea, selects and prioritizes construction projects based on military needs.
- (3) The Republic of Korea awards construction contracts and implements construction projects in accordance with the corresponding timeline as identified and developed during project design.
- (4) The United States is responsible for project design.
- (5) The United States provides design specifications and a list of acceptable contractors to the Republic of Korea. Contractors shall be Republic of Korea companies selected from the United States Army Corps of Engineers Far East District's Pre-Qualified contractor list.
- (6) Design and Construction oversight, which averages twelve

(12) percent of the total project costs, is paid by the Republic of Korea in cash.

(7) Any bid savings shall be used for future projects.

(8) The United States and the Republic of Korea shall establish proper procedures to prevent unexecuted contributions. In the unlikely event that unexecuted contributions exist at the end of the year, those contributions shall roll over to the next year.

(9) An annual review system shall be established to ensure "in-kind" procedures are working. For the project or projects where it is determined "in-kind" procedures are not working, the Republic of Korea and the United States shall consult in an effort to resolve the problem, and take proper actions to complete the project or projects including providing cash to the United States.

Thirty (30) percent of the 2009 Republic of Korea Funded Construction contribution shall be provided by the Republic of Korea in-kind, sixty (60) percent of the 2010 Republic of Korea Funded Construction contribution shall be provided by the Republic of Korea in-kind, and from 2011 to 2013 eighty-eight (88) percent of the Republic of Korea Funded Construction contribution shall be provided by the Republic of Korea in-kind.

If the foregoing is acceptable to the Republic of Korea, the Embassy has the honor to propose that this note, together with the Ministry's reply, shall constitute an agreement between the two governments, which shall enter into force at the same time as the SMA.

The Embassy of the United States of America avails itself of this opportunity to renew to the Ministry of Foreign Affairs and Trade the assurances of its highest consideration.

Seoul, January 15, 2009.

The Ministry of Foreign Affairs and Trade of the Republic of Korea has the honor to inform the Embassy of the United States of America that the proposals set forth in the Embassy's note are acceptable to the Republic of Korea and to agree that the Embassy's note and this note shall be regarded as constituting an agreement between the two governments, which shall enter into force at the same time as the SMA.

The Ministry of Foreign Affairs and Trade avails itself of the opportunity to renew to the Embassy of the United States of America the assurances of its highest consideration.

Seoul, January 15, 2009

End Text.

STEPHENS